

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERNEST GALLEGOS,

Petitioner,

v.

CIV 10-0372 JB/KBM

ERASMO BRAVO, Warden, et al.,

Respondents.

ORDER DENYING APPOINTMENT OF COUNSEL

This habeas matter under 28 U.S.C. § 2254 is before the Court on Petitioner's motion for appointment of counsel. He desires an attorney for the purpose of investigating witnesses and presenting evidence. *See Doc. 13.*

There is no constitutional right to counsel in habeas proceedings, and the decision whether the appoint counsel is left the court's discretion. Ordinarily, there is no reason to appoint counsel unless the case has reached the stage of the proceedings where an evidentiary hearing is required. *See e.g., United States v. Leopard*, 170 F.3d 1013 (10th Cir. 1999) (§ 2255 case); *Swazo v. Wyoming Dept. of Corrections*, 23 F.3d 332 (10th Cir. 1994) (§ 2254 case); *see also Karls v. Hudson*, 182 F.3d 932 (10th Cir.) (unpublished) (§ 2241 case), *cert. denied*, 528 U.S. 987 (1999).

This case has not reached that stage. I have taken the matter under submission on the petition and on the state materials I ordered respondents to file, and will determine whether the

matter requires further supplementation and/or an evidentiary hearing. *See Docs. 11-12* (Record Proper materials filed 7/9/10). Petitioner is advised that I will attend to this matter as quickly as possible. I expect him to be patient, as the Court has many other matters pending as well.

Wherefore,

IT IS HEREBY ORDERED that the motion (*Doc. 13*) is DENIED.


UNITED STATES MAGISTRATE JUDGE